

From: "Steven Swearingen" <steve@fluorochemika.com>
To: <Michelle.Zackery@dnr.state.ga.us>
CC: "Pam Blair" <PBlair@mbb-law.com>
Date: 6/12/2012 12:38 PM
Subject: Hazardous Waste Inquiry
Attachments: Masterfume Manual.pdf

Michelle:

We need your help. We are a small firm in Cordele Ga and the Drexel Company wants to deliver to us cylinders which we own but that contain significant residues of the pesticide sulfuryl fluoride. We believe a heel of this material which is characteristic waste is a hazardous waste. We sold these cylinders of SF to Drexel almost two years ago and we are no longer in this business.

Is it proper for us to forced to accept gas cylinders that contain a pesticide residue? Is it proper for Drexel to even transport these cylinders to us when they have designated it as no recoverable value.

Drexel characterizes the material as no different than gasoline in a tank (see below) however it is a pesticide residue which their own use manual states must be disposed of in a permitted facility.

It would have been of value to us in the past when we were in this business. The gas was sold by us to Drexel as a industrial product, which then was designated a pesticide and distributed in California and Florida.

Our position has been that we own the cylinders and they own the product and that we are not permitted to accept waste material.

These cylinders are presently stored at the 120 Cape Road site in Cordele Ga that is owned by the Drexel Company.

We are also located in Cordele Ga at 501 South Harris.

Steven Swearingen
302 598 7733

-----Original Message-----

From: Pam Blair
To: swearingen.steve
Subject: Fwd: From Pam Blair
Sent: Jun 12, 2012 8:31 AM

See below Sent from my iPhone so please pardon brevity and lack of editing Pam Warnock Blair 81 Monroe Ave. Sixth Floor Memphis, TN. 38103 901.624.0640

From: Mike Rafferty <mrafferty@harrisskelton.com> Date: June 11, 2012 9:53:56 PM CDT To: Mike Rafferty <mrafferty@harrisskelton.com> Cc: Pam Warnock Blair <PBlair@mbb-law.com>, David Pool <dpool@drexchem.com>

Unused gas is not waste, anymore than unused gasoline in a gas tank is waste. This is at least the 4th

time that I've addressed this issue of the return of FC's cylinders AND the return of Drexel's property that is in FC's warehouse on Harris Street. In good faith, we have refrained from involving the court on prior occasions, despite FC's insistence on placing conditions on Drexel's return of the cylinders, which conditions are not in the Cooperation Agreement AND which conditions are inconsistent with the way the parties behaved while performing under the Agreement. I understood that you would get back to me today with a date that we could return the cylinders and Drexel could retrieve its property. Despite your agreement to do so, you simply reiterated Mr. Swearingen's unilateral and unsupported position that Drexel has an obligation to do anything with FC's cylinders other than return them to FC. Please refer to section 7.2 of the Agreement. I am trying to get a direct answer to my previous inquiry. Please, without further questions or comment, tell me if FC will agree to schedule a time for Drexel to return FC's cylinders to FC's warehouse on Harris Street and for Drexel to retrieve its property from FC's warehouse. If so, please tell me when we can do this. We would prefer to do the return this week. We will file a motion for a mandatory injunction to compel FC to accept delivery and to allow Drexel to pick up its property AND we will ask the court to award Drexel its attorneys' fees associated with prosecuting the motion if FC will not make this simple arrangement. For purposes of the Local Rules' consultation requirement, I need your answer by the close of business on Tuesday. I have a hearing in Circuit Court in the morning but I expect to be in my office by noon. I look forward to receiving FC's answers to my questions. MFR Sent from my iPhone On Jun 11, 2012, at 9:25 PM, "Mike Rafferty" <mrafferty@harrishelton.com> wrote:

Respectfully, Pam, it is nonsense to say that unused gas is waste. Sent from my iPhone On Jun 11, 2012, at 4:45 PM, "Pam Warnock Blair" <PBlair@mbb-law.com> wrote: I told you I would fully respond re: Drexel's return of cylinders. If the cylinders contain gas and Fluorichemika is not in the SF business, the gas in the cylinders is categorically waste. Steve has checked with Georgia And has concerns.

Does Drexel have an opinion about giving the waste to Fluorochemika? Sent from my iPhone so please pardon brevity and lack of editing Pam Warnock Blair 81 Monroe Ave. Sixth Floor Memphis, TN. 38103 901.624.0640
Sent from my Verizon Wireless BlackBerry

From: Eddie Williams
To: Weglewski, Linda
Date: 6/13/2012 9:01 AM
Subject: Fwd: Hazardous Waste Inquiry
Attachments: Hazardous Waste Inquiry

Linda,

Is this something that you would respond to? I did a little research of my own. It does not appear that this residue of sulfuric fluoride is a regulated residue under 261.33. So I don't think it is regulated as a hazardous waste. Many MSDSs on-line state that the empty cylinders are supposed to be returned to the company that provided the chemical in the cylinders. I would be interested to know what Fluorokemica (the people that the e-mail is from) indicated on the MSDS that they provided to Drexel when the original shipment was made two years ago.

Of course their agreement is something we have nothing to do with.

Eddie

>>> Michelle Zackery 6/13/2012 7:29 am >>>
FYI- This is a facility located in Cherjuana's area.

From: Bruce Khaleghi
To: Michelle Zackery
CC: Eddie Williams; John Williams; Linda Weglewski
Date: 6/14/2012 8:15 AM
Subject: Re: Fwd: Hazardous Waste Inquiry

Have you responded ? If the cylinders has no recoverable value, they must be handled accordingly as waste as indicated.

>>> Michelle Zackery 6/13/2012 7:29 am >>>
FYI- This is a facility located in Cherjuana's area.

From: "Steven Swearingen" <steve@fluorochemika.com>
To: "Linda Weglewski" <Linda.Weglewski@dnr.state.ga.us>
CC: "Bruce Khaleghi" <Bruce.Khaleghi@dnr.state.ga.us>, "Eddie Williams" <Edd...
Date: 8/12/2012 1:49 PM
Subject: Hazardous Waste Inquiry Drexel Chemical Cordele Georgia
Attachments: Ruling by Pham on Drexel Hazardous Waste.pdf; RESP INJUNCTION.pdf

The Western Court of Tennessee agreed with your position that residual sulfuryl fluoride as a pesticide is indeed a hazardous waste if there is no intent to reuse (refill) the cylinders in commerce. I attached my attorneys notice and the order.

The Drexel Chemical Company of Tennessee had earlier sought to force us to take cylinders we owned that contained waste pesticide residues that they owned. It is my understanding that Drexel continues to store these cylinders with residues of sulfuryl fluoride under pressure at their 120 Cape Road facility in Cordele Georgia.

These cylinders (188) that are the property of Fluorochemika have been in the possession of Drexel Chemical since they abrogated a ten year cooperation agreement on December 1st of 2010. This is far in excess of a 30 or 90 day holding period for hazardous waste.

We have found that the Drexel Chemical Company regards many legal statutes as optional to follow. In this case they argued that sulfuryl fluoride was not a hazardous waste anymore than unused gasoline would be designated. This argument was the basis of our consultation with you.

It is my belief that Drexel Chemical continues to store these waste cylinders of Sulfuryl Fluoride at their 120 Cape Road plant and that they dispense an associated material known as chloropicrin, CAS# 76-06-2 without an air permit, appropriate facilities or associated tier 2 registration. These materials are the most highly regulated pesticides registered by industry.

Steven Swearingen

Judge Pham denied Drexel's motion for preliminary injunction. I attach the Order. Please note the last sentence where Pham acknowledges the role of federal regulations in the issue. He also discounts Drexel's inane arguments based on preserving the status quo and prior course of dealing. For this argument, Drexel attempted to rely on the fact that during the business relationship, Drexel returned cylinders with gas to Fluorochemika (ignoring that more Master Fume would return to the cylinders.) Injunctive relief is simply not appropriate as it is categorized as 'extraordinary relief' and is important in true emergencies (i.e. when people are chopping trees down etc.)

Pam Warnock Blair*
Attorney at Law
McNabb, Bragorgos & Burgess, PLLC
81 Monroe Sixth Floor
Memphis, Tennessee 38103
Phone - 901.624.0640
Fax - 901.624.0650

*Formerly Pam Warnock Green until marriage in 9/09

Steven Swearingen
-----Original Message-----
From: Linda Weglewski [mailto:Linda.Weglewski@dnr.state.ga.us]
Sent: Thursday, June 14, 2012 09:00 AM
To: 'Steven Swearingen'
Cc: 'Bruce Khaleghi', 'Eddie Williams', 'Michelle Zackery', 'Pam Blair'
Subject: Re: Hazardous Waste Inquiry

** High Priority **

Hi Steve - I am a Hazardous Waste Compliance Officer with the Hazardous Waste Compliance Program. Your question was forwarded to me for a response.

If the cylinders have no recoverable value, they must be handled accordingly by the generator, Drexel, as waste and disposed of at a permitted facility. If it is hazardous, it must be managed as such under 40 CFR 260-265. This includes transport by a hazardous waste transporter to a permitted Treatment, Storage and Disposal Facility for disposal.

I hope this answers your questions. Please contact me if I can be of further assistance.

Linda Weglewski
404-657-8839

linda_weglewski@dnr.state.ga.us

>>> On 6/12/2012 at 12:38 PM, in message <W1869228732277461339519080@webmail46>, "Steven Swearingen" <steve@fluorochemika.com> wrote:

> Michelle:

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